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INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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CHIEF COUNSEL

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Dear Ms. [REDACTED]:

This is in response to your letter of October 3, 2002, in which you requested clarification as to whether publishers and purchasers of rights to authors' works should issue Forms 1099 to the authors directly, rather than to the authors' agents.

Recent amendments to section 1.6041-1 of the Income Tax Regulations (the Regulations), providing rules for information reporting of payments made on behalf of another person, have inadvertently caused some confusion as to the reporting obligations of literary agents and publishers with respect to payments to authors. That regulation, however, applies to payments reportable under section 6041 of the Internal Revenue Code (the Code), and not to royalties which are reportable under section 6050N of the Code.

Section 6041 of the Code provides that persons engaged in a trade or business that make payments in the course of such trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(e), 6049(a), or 6050N(a) applies), and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), or 6045), of \$600 or more in any taxable year ... shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

Under the authority of section 6041, the Internal Revenue Service promulgated regulations providing for information reporting on Forms 1099 and W-2 for payments reportable under section 6041(a). Section 1.6041-1(a) states that the payments required to be reported are salaries, wages, commissions, fees, and other forms of

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compensation aggregating \$600 or more, interest, rents, royalties, annuities, pensions, and other gains, profits, and income aggregating \$600 or more. However, such payments shall not include any payments of amounts with respect to which an information return is required by, or may be required under authority of, section 6042(a), 6043(a)(2), 6044(a), 6045, 6049(a)(1) and (2), 6050N(a), 6050P(a) or (b).

Section 1.6041-1(e) of the regulations provides for information reporting when a payment is made on behalf of another person who is the actual source of the funds. That regulation states that a person that makes a payment in the course of its trade or business on behalf of another person is the payor that must make a return of information under this section with respect to that payment if the payment is described in paragraph (a) of this section and, under all the facts and circumstances, that person (1) performs management or oversight functions in connection with payment; or (2) has a significant economic interest in the payment.

Section 6050N of the Code requires a person who makes payments of royalties (or similar amounts) aggregating \$10 or more, or who receives payments of royalties as a nominee and makes payments aggregating \$10 or more with respect to such royalties (or similar amounts), to make an information return. The legislative history indicates that this provision applies to royalty payments with respect to the right to exploit natural resources, such as oil and gas, as well as royalty payments with respect to the right to exploit intangible property, such as copyrights, trade names, trademarks, books and other literary compositions. Thus, royalty payments paid by a publisher to an author for use of the author's work would be reportable under section 6050N.

The regulations under section 6041 of the Code apply only to payments reportable under section 6041. Although section 6041 has broad applicability to many types of payments, and § 1.6041-1(a) of the regulations includes royalties in its list of reportable payments, both the Code and regulations specifically exclude royalty payments reportable under section 6050N from the provisions of section 6041. Such payments should therefore be reported according to section 6050N and the regulations thereunder, which provide different rules for information reporting by middlemen and nominees.

While the section 6041 regulations do not apply to royalty payments reportable under section 6050N, there is a reference in § 1.6041-1(e)(5) to payments from publishers to literary agents that has generated some confusion. This regulation contains examples illustrating the application of the regulation to several fact situations. Example 6 deals with a payments received by a literary agent from a publisher for amounts earned by the agent's client, an author. The amounts are referred to as "fees" in the example, which does not use the term "royalties." Applying the provisions of the regulation, the example concludes that the literary agent does not have an information reporting obligation with respect to his payment to the author. The example directs the publisher to report the payment of the fees, and the author to report the payment of the literary

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agent's commission and any other third party service fees, pursuant to § 1.6041-1(a)(1) and (f) of the regulations.

Example 6 of § 1.6041-1(e) is applicable only to payments reportable under section 6041. It should not be read as illustrative of the correct information reporting for royalties that are reportable under section 6050N, or any other payment reportable under a section other than section 6041. Therefore, if a publisher pays an author or literary agent a fee for the author's services which is not a royalty, such as a speaker fee or appearance fee, that amount would be reportable under section 6041 and these regulations would be applicable.

This letter provides general information only. It describes well established interpretations or principles of tax law without applying them to a specific set of facts. It is advisory only and has no binding effect with the Internal Revenue Service. This letter is intended only to provide you with general guidance for determining how to comply with applicable law.

We hope this is helpful. We intend to study these issues further and to provide published guidance to further clarify the reporting of authors' royalty payments under section 6050N. If you have any further questions, please call [REDACTED] at [REDACTED]

Sincerely,

James C. Gibbons
Chief, Branch 1
Administrative Provisions and Judicial
Practice